

108TH CONGRESS  
1ST SESSION

# H. R. 787

To amend titles XVIII and XIX of the Social Security Act with respect to reform of Federal survey and certification process of nursing facilities under the Medicare and Medicaid Programs.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 13, 2003

Mr. CAMP introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend titles XVIII and XIX of the Social Security Act with respect to reform of Federal survey and certification process of nursing facilities under the Medicare and Medicaid Programs.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicare and Medicaid  
5 Nursing Facility Quality Improvement Act of 2003”.

1 **SEC. 2. QUALITY IMPROVEMENT FOR NURSING FACILITIES**  
2 **UNDER THE MEDICARE AND MEDICAID PRO-**  
3 **GRAMS.**

4 (a) INCENTIVES FOR IMMEDIATE IMPROVEMENT AND  
5 PROTECTION OF NEEDED TRAINING PROGRAMS.—

6 (1) MEDICARE PROGRAM.—Section 1819(f)(2)  
7 of the Social Security Act (42 U.S.C. 1395i–3(f)(2))  
8 is amended—

9 (A) in subparagraph (B)(iii), by striking  
10 “subparagraph (C)” and inserting “subpara-  
11 graphs (C) and (D)”; and

12 (B) by adding at the end the following new  
13 subparagraph:

14 “(D) RESTORATION OF NURSE AIDE  
15 TRAINING UPON DEMONSTRATION OF COMPLI-  
16 ANCE.—The prohibition on program approval  
17 described in subparagraph (B)(iii)(I) shall not  
18 be continued when the facility involved through  
19 on-site verification demonstrates compliance  
20 with the applicable standards.”.

21 (2) MEDICAID PROGRAM.—Section 1919(f)(2)  
22 of such Act (42 U.S.C. 1396r(f)(2)) is amended—

23 (A) in subparagraph (B)(iii), by striking  
24 “subparagraph (C)” and inserting “subpara-  
25 graphs (C) and (D)”; and

1 (B) by adding at the end the following new  
 2 subparagraph:

3 “(D) RESTORATION OF NURSE AIDE  
 4 TRAINING UPON DEMONSTRATION OF COMPLI-  
 5 ANCE.—The prohibition on program approval  
 6 described in subparagraph (B)(iii)(I) shall not  
 7 be continued when the facility involved through  
 8 on-site verification demonstrates compliance  
 9 with the applicable standards.”.

10 (b) REQUIREMENTS FOR NURSE AIDE TRAINING.—

11 (1) MEDICARE PROGRAM.—Section  
 12 1819(f)(2)(B)(iii)(I) of such Act (42 U.S.C. 1395i–  
 13 3(f)(2)(B)(iii)(I)) is amended—

14 (A) in the matter before subdivision (a), by  
 15 striking “, within the previous 2 years”;

16 (B) in subdivision (a), by striking “has op-  
 17 erated” and inserting “is operating”;

18 (C) in subdivision (b), by striking “has  
 19 been subject” and inserting “is subject”; and

20 (D) in subdivision (c), by inserting “within  
 21 the previous 2 years” after “(c)”.

22 (2) MEDICAID PROGRAM.—Section  
 23 1919(f)(2)(B)(iii)(I) of such Act (42 U.S.C.  
 24 1396r(f)(2)(B)(iii)(I)) is amended—

1 (A) in the matter before subdivision (a), by  
 2 striking “, within the previous 2 years”;

3 (B) in subdivision (a), by striking “has op-  
 4 erated” and inserting “is operating”;

5 (C) in subdivision (b), by striking “has  
 6 been subject” and inserting “is subject”; and

7 (D) in subdivision (c), by inserting “within  
 8 the previous 2 years” after “(c)”.

9 (c) PROMOTING INNOVATION AND QUALITY IM-  
 10 PROVEMENT THROUGH STATE WAIVERS.—

11 (1) MEDICARE PROGRAM.—Section 1819(g) of  
 12 such Act (42 U.S.C. 1395i–3(g)) is amended by add-  
 13 ing at the end the following new paragraph:

14 “(6) WAIVER DEMONSTRATION AUTHORITY TO  
 15 PROMOTE INNOVATION AND QUALITY IMPROVE-  
 16 MENT.—

17 “(A) IN GENERAL.—At the request of a  
 18 State, but not to exceed a total of 8 States, the  
 19 Secretary may waive provisions of this sub-  
 20 section relating to survey and certification pro-  
 21 cedures in order to test and implement innova-  
 22 tive alternatives to the survey process otherwise  
 23 applicable. The Secretary shall provide special  
 24 consideration to the application of alternative  
 25 procedures that increase the use of outcome

1 measures, the incorporation of quality of life  
2 measures, and improve consistency and accu-  
3 racy in deficiency determinations and survey re-  
4 sults. The Secretary shall approve a waiver re-  
5 quest if applicant demonstrates significant po-  
6 tential for improving the quality of care, quality  
7 of life, and safety of residents.

8 “(B) CONSIDERATION OF VIEWS OF  
9 STAKEHOLDERS.—The Secretary shall only con-  
10 sider waiver applications under this paragraph  
11 from a State under this paragraph if the State  
12 has convened and consulted with appropriate  
13 stakeholders in the State, including representa-  
14 tives of nursing facilities, consumers groups,  
15 the State long term care ombudsman, labor or-  
16 ganizations (and where such organizations are  
17 not present in the industry, other employee rep-  
18 resentatives), and licensed health care pro-  
19 viders, to assist in developing their alternative  
20 system. In determining whether to grant such  
21 waivers the Secretary shall take into consider-  
22 ation the views of the stakeholders convened by  
23 the State.”.

1           (2) MEDICAID PROGRAM.—Section 1919(g) of  
2           such Act (42 U.S.C. 1396r(g)) is amended by add-  
3           ing at the end the following new paragraph:

4           “(6) WAIVER DEMONSTRATION AUTHORITY TO  
5           PROMOTE INNOVATION AND QUALITY IMPROVE-  
6           MENT.—

7           “(A) IN GENERAL.—At the request of a  
8           State, but not to exceed a total of 8 States, the  
9           Secretary may waive provisions of this sub-  
10          section relating to survey and certification pro-  
11          cedures in order to test and implement innova-  
12          tive alternatives to the survey process otherwise  
13          applicable. The Secretary shall provide special  
14          consideration to the application of alternative  
15          procedures that increase the use of outcome  
16          measures, the incorporation of quality of life  
17          measures, and improve consistency and accu-  
18          racy in deficiency determinations and survey re-  
19          sults. The Secretary shall approve a waiver re-  
20          quest if it demonstrates significant potential for  
21          improving the quality of care, quality of life,  
22          and safety of residents.

23          “(B) CONSIDERATION OF VIEWS OF  
24          STAKEHOLDERS.—The Secretary shall only con-  
25          sider waiver applications under this paragraph

1 from a State under this paragraph if the State  
 2 has convened and consulted with appropriate  
 3 stakeholders in the State, including representa-  
 4 tives of nursing facilities, consumers groups,  
 5 the State long term care ombudsman, labor or-  
 6 ganizations (and where such organizations are  
 7 not present in the industry, other employee rep-  
 8 resentatives), and licensed health care pro-  
 9 viders, to assist in developing their alternative  
 10 system. In determining whether to grant such  
 11 waivers the Secretary shall take into consider-  
 12 ation the views of the stakeholders convened by  
 13 the State.”.

14 (d) REMOVAL OF INFLEXIBILITY IN PROVIDER TER-  
 15 MINATION.—

16 (1) MEDICARE PROGRAM.—Section 1819(h)(2)  
 17 of such Act (42 U.S.C. 1395i–3(h)(2)) is amended—

18 (A) in subparagraph (D), by striking “If”  
 19 and inserting “Subject to subparagraph (F),  
 20 if”;

21 (B) in subparagraph (E), by striking “In”  
 22 and inserting “Subject to subparagraph (F),  
 23 in”; and

24 (C) by adding at the end the following new  
 25 subparagraph:

1           “(F) CONTINUATION OF PAYMENTS PEND-  
2           ING REMEDIATION WHEN FLEXIBILITY NEEDED  
3           TO PROTECT RESIDENTS.—The Secretary may  
4           continue payments, over a period not longer  
5           than 12 months after the effective date of the  
6           findings, under this title with respect to a nurs-  
7           ing facility not in compliance with a require-  
8           ment of subsection (b), (c), or (d), if—

9                   “(i) the State survey agency finds  
10                  that ceasing payments is not in the best  
11                  interests of residents and that continuation  
12                  of payments would not jeopardize resi-  
13                  dents’ health and safety;

14                  “(ii) the State survey agency finds  
15                  that it is more appropriate to take alter-  
16                  native action to assure compliance of the  
17                  facility with the requirements than to ter-  
18                  minate the certification of the facility; and

19                  “(iii) the State has submitted a plan  
20                  and timetable for corrective action to the  
21                  Secretary for approval and the Secretary  
22                  approves the plan of corrective action.”.

23           (2) MEDICAID PROGRAM.—Section 1919(h)(2)  
24           of such Act (42 U.S.C. 1396r(h)(2)) is amended—



1 (A) in subparagraph (C), by striking “If”  
2 and inserting “Subject to subparagraph (G),  
3 if”;

4 (B) in subparagraph (D), by striking “In”  
5 and inserting “Subject to subparagraph (G),  
6 in”; and

7 (C) by adding at the end the following new  
8 subparagraph:

9 “(G) CONTINUATION OF PAYMENTS PEND-  
10 ING REMEDIATION WHEN FLEXIBILITY NEEDED  
11 TO PROTECT RESIDENTS.—The Secretary may  
12 continue payments, over a period not longer  
13 than 12 months after the effective date of the  
14 findings, under this title with respect to a nurs-  
15 ing facility not in compliance with a require-  
16 ment of subsection (b), (c), or (d), if—

17 “(i) the State survey agency finds  
18 that ceasing payments is not in the best  
19 interests of residents and that continuation  
20 of payments would not jeopardize resi-  
21 dents’ health and safety;

22 “(ii) the State survey agency finds  
23 that it is more appropriate to take alter-  
24 native action to assure compliance of the

1 facility with the requirements than to ter-  
2minate the certification of the facility; and  
3 “(iii) the State has submitted a plan  
4 and timetable for corrective action to the  
5 Secretary for approval and the Secretary  
6 approves the plan of corrective action.”.

7 (e) ACCESS TO INFORMAL DISPUTE RESOLUTION  
8 PROCESS.—

9 (1) MEDICARE PROGRAM.—Section 1819(g)(1)  
10 of such Act (42 U.S.C. 1395i–3(g)(1)) is amended  
11 by adding at the end the following new subpara-  
12 graph:

13 “(F) ESTABLISHMENT OF INFORMAL,  
14 INDEPENDENT DISPUTE RESOLUTION PROC-  
15 ESS.—Each State shall establish an informal  
16 dispute resolution process that allows facilities  
17 to settle disputes involving compliance with the  
18 standards established under this section. Such  
19 process shall rely on independent third parties,  
20 not related to the State survey agency or the  
21 facilities, in resolving disputes.”.

22 (2) MEDICAID PROGRAM.—Section 1919(g)(1)  
23 of such Act (42 U.S.C. 1396r(g)(1)) is amended by  
24 adding at the end the following new subparagraph:

1                   “(F) ESTABLISHMENT OF INFORMAL,  
 2                   INDEPENDENT DISPUTE RESOLUTION PROC-  
 3                   ESS.—Each State shall establish an informal  
 4                   dispute resolution process that allows facilities  
 5                   to settle disputes involving compliance with the  
 6                   standards established under this section. Such  
 7                   process shall rely on independent third parties,  
 8                   not related to the State survey agency or the  
 9                   facilities, in resolving disputes.”.

10           (f) DEFERENCE TO ATTENDING PHYSICIAN DIAG-  
 11           NOSIS AND TREATMENT DECISIONS DURING THE SURVEY  
 12           PROCESS.—

13           (1) MEDICARE PROGRAM.—Section 1819(g)(2)  
 14           of such Act (42 U.S.C. 1395i–3(g)(2)) is amended  
 15           by inserting at the end the following new subpara-  
 16           graph:

17                   “(F) DEFERENCE TO ATTENDING PHYSI-  
 18                   CIAN DIAGNOSIS AND TREATMENT.—

19                   “(i) IN GENERAL.—In the conduct of  
 20                   any surveys under this subsection and the  
 21                   compliance decisions made thereunder, sur-  
 22                   veyors shall defer to the diagnosis and  
 23                   treatment decisions of the resident’s at-  
 24                   tending physician and of the facility’s med-  
 25                   ical director, and to a plan of care estab-

lished pursuant to subsection (b)(2), as long as such decisions and plans are consistent with acceptable standards of practice.

“(ii) FAILURE TO DEFER TO TREATING DECISION.—Each State and the Secretary shall implement programs to monitor and correct instances of failure of surveyors to adhere to the requirements of this subparagraph.”.

(2) MEDICAID PROGRAM.—Section 1919(g)(2) of such Act (42 U.S.C. 1396r(g)(2)) is amended by inserting at the end the following new subparagraph:

“(F) DEFERENCE TO ATTENDING PHYSICIAN DIAGNOSIS AND TREATMENT.—

“(i) IN GENERAL.—In the conduct of any surveys under this subsection and the compliance decisions made thereunder, surveyors shall defer to the diagnosis and treatment decisions of the resident’s attending physician and of the facility’s medical director, and to a plan of care established pursuant to subsection (b)(2), as long as such decisions and plans are con-

1                   sistent with acceptable standards of prac-  
2                   tice.

3                   “(ii) FAILURE TO DEFER TO TREAT-  
4                   ING DECISION.—The State and the Sec-  
5                   retary shall implement programs to mon-  
6                   itor and correct instances of failure of sur-  
7                   veyors to adhere to the requirements of  
8                   this subparagraph.”.

9           (g) DISSEMINATION OF INFORMATION ON BEST  
10 PRACTICES.—

11           (1)           MEDICARE           PROGRAM.—Section  
12           1819(g)(2)(E) of such Act (42 U.S.C. 1395i–  
13           3(g)(2)(E)) is amended by adding at the end the fol-  
14           lowing new clause:

15                   “(iv) PERMITTING DISSEMINATION OF  
16                   INFORMATION ON BEST AND INNOVATIVE  
17                   PRACTICES.—Nothing in this section shall  
18                   be construed as precluding a member of a  
19                   survey team from providing information to  
20                   facility staff on best or innovative practices  
21                   in complying with the requirements of this  
22                   section.”.

23           (2)           MEDICAID           PROGRAM.—Section  
24           1919(g)(2)(E) of such Act (42 U.S.C.

1       1396r(g)(2)(E)) is amended by adding at the end  
2       the following new clause:

3                       “(iv) PERMITTING DISSEMINATION OF  
4                       INFORMATION ON BEST AND INNOVATIVE  
5                       PRACTICES.—Nothing in this section shall  
6                       be construed as precluding a member of a  
7                       survey team from providing information to  
8                       facility staff on best or innovative practices  
9                       in complying with the requirements of this  
10                      section.”.

11       (h) REMOVING BARRIERS THAT DETER NEW MAN-  
12       AGEMENT FROM TAKING OVER AND IMPROVING PROB-  
13       LEM FACILITIES.—

14                      (1) MEDICARE PROGRAM.—Section 1819(h) of  
15       such Act (42 U.S.C. 1395i–3(h)) is amended by  
16       adding at the end the following new paragraph:

17                      “(7) FOSTERING IMPROVEMENT OF FACILITIES  
18                      WITH POOR COMPLIANCE HISTORIES.—The Sec-  
19       retary shall provide incentives for operators with his-  
20       tories of good compliance to acquire facilities with  
21       poor compliance histories. Such incentives shall be  
22       designed to promote the sustained provision of high-  
23       quality care and shall only be made available in the  
24       case of bona fide, arm’s-length sale of facilities with  
25       poor compliance histories.”.

1           (2) MEDICAID PROGRAM.—Section 1919(h) of  
2       such Act (42 U.S.C. 1396r(h)) is amended by add-  
3       ing at the end the following new paragraph:

4           “(10) FOSTERING IMPROVEMENT OF FACILI-  
5       TIES WITH POOR COMPLIANCE HISTORIES.—The  
6       Secretary shall provide incentives for operators with  
7       histories of good compliance to acquire facilities with  
8       poor compliance histories. Such incentives shall be  
9       designed to promote the sustained provision of high-  
10      quality care and shall only be made available in the  
11      case of bona fide, arm’s-length sale of facilities with  
12      poor compliance histories.”.

13      (i) ALLOWING APPEALS OF ALL DEFICIENCIES.—

14           (1) MEDICARE PROGRAM.—Section 1819(h) of  
15      such Act, as amended by subsection (g)(1), is fur-  
16      ther amended by adding at the end the following  
17      new paragraph:

18           “(8) RIGHT TO APPEAL ALL DEFICIENCY CITA-  
19      TIONS.—Notwithstanding any other provision of law,  
20      a facility may appeal any deficiency determination  
21      under this section with respect to which a penalty  
22      has not been imposed in the same manner as the fa-  
23      cility may appeal such determination if a penalty  
24      had been imposed.”.

1           (2) MEDICAID PROGRAM.—Section 1919(h) of  
2       such Act, as amended by subsection (g)(2), is fur-  
3       ther amended by adding at the end the following  
4       new paragraph:

5           “(11) RIGHT TO APPEAL ALL DEFICIENCY CITA-  
6       TIONS.—Notwithstanding any other provision of law,  
7       a facility may appeal any deficiency determination  
8       under this section with respect to which a penalty  
9       has not been imposed in the same manner as the fa-  
10      cility may appeal such determination if a penalty  
11      had been imposed.”.

12       (j) ENCOURAGEMENT OF EXCELLENCE IN NURSING  
13      FACILITY CARE.—

14           (1) MEDICARE PROGRAM.—Section 1819(h)(2)  
15      of such Act is amended by adding at the end the fol-  
16      lowing new subparagraph:

17           “(F) AWARD PROGRAMS.—The Secretary  
18       shall establish a program that rewards skilled  
19       nursing facilities that provide the highest qual-  
20       ity care in a manner similar to that required to  
21       be established by States under section  
22       1919(h)(2)(F). Such program may use public  
23       recognition, incentive payments, or other  
24       means.”.



1           (2)           MEDICAID           PROGRAM.—Section  
2       1919(h)(2)(F) of such Act is amended by striking  
3       “may establish” and inserting “shall establish”.

4       (k) EFFECTIVE DATE.—The amendments made by  
5 this section shall take effect 1 month after the date of  
6 the enactment of this Act except in cases where regula-  
7 tions are needed to implement these changes and in such  
8 cases shall be effective 6 months after such enactment  
9 date.

○